

EXHIBIT C

Case No. 21-CV-0811-TSZ

(Exhibit C to Declaration of Philip P. Mann)

The Honorable David W. Christel

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ENTERPRISE MANAGEMENT LIMITED,
INC. and DR. MARY LIPPITT,

Plaintiffs,

v.

CONSTRUX SOFTWARE BUILDERS, INC.
and STEVE C. MCCONNELL

Defendants.

Case No. 2:19-cv-01458-DWC

**FIRST AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT,
UNFAIR BUSINESS PRACTICES,
AND INFRINGEMENT OF
PERSONALITY RIGHTS**

JURY DEMAND

Plaintiffs Enterprise Management Limited, Inc. (“Enterprise”) and Dr. Mary Lippitt (“Dr. Lippitt”) (collectively “Plaintiffs”), in support of this Complaint against Defendants Construx Software Builders, Inc. (“Construx”) and Steven (*p/k/a* Steve) C. McConnell (“McConnell”) (collectively “Defendants”), do hereby allege as follows:

1. This is an action based upon violations of the Copyright Act 17 U.S.C. § 501, *et seq.*, Washington State Unfair Business Practices 19.86.010 *et seq.*, and Washington State Personality Rights 63.60.010 *et seq.*. All claims herein arise out of Defendants’ unlawful copying and distribution of Plaintiffs’ copyrighted materials. Plaintiffs seek permanent injunctive relief to enjoin Defendants from future violations, monetary damages, an award of attorney’s fees and costs, and such additional relief as this Court deems appropriate.

THE PARTIES

2. Plaintiff Enterprise Management Limited, Inc. is a Florida corporation with its principal place of business at 4531 Roanoak Way, Palm Harbor, Florida. Enterprise provides consulting, training, coaching, and business assessments to other businesses.

3. Plaintiff Dr. Mary Lippitt is an individual residing at 4531 Roanoak Way, Palm Harbor, Florida. Dr. Lippitt is the President of, and a shareholder of, Enterprise.

4. Defendant Construx Software Builders, Inc is a Washington corporation with its principal place of business at 10900 NE 8th St, Suite 1350, Bellevue, Washington.

5. Defendant Steven C. McConnell is a resident of Bellevue, Washington. McConnell is the founder and CEO of Construx. McConnell is also the author of “More Effective Agile,” and the presenter of “Agile Transformation Tips – Change Model Part 1.”

JURISDICTION AND VENUE

6. This is a civil action for copyright infringement arising under Sections 32 and 43(a) of the Copyright Act, 17 U.S.C. § 501 et seq. and unfair business practices arising under RCW 19.86.010 *et seq.*

7. This Court has subject matter jurisdiction pursuant to 17 U.S.C. § 501, et seq. and 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the law of the State of Washington pursuant to 28 U.S.C. § 1367(a), because the State law claims are so related to the federal claims that they form the same case or controversy and derive from a common nucleus of operative facts.

9. This Court has personal jurisdiction over Defendants, who have and are engaged in business activities in and directed to Washington.

10. Venue is proper in this District under 28 U.S.C. § 1400(a) because both Construx and McConnell are residents of this District. Further, Construx maintains its principal place of business in this district, and its officers are located in this district. Venue is also proper under 28

1 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to the claim occurred
2 in this District.

3 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

4 **Enterprise Management**

5 11. Enterprise is a consulting organization that provides business-consulting services
6 that help organizations develop strategies to capture the benefits of new opportunities, enhance
7 engagement, ensure execution, and evaluate systems for maximum return.

8 12. Among other things, Enterprise facilitates, trains, and consults on change
9 initiatives, introducing new technology, gaining support for new initiatives, improving cross-
10 functional collaboration, boosting innovation, or enabling new leaders to quickly build their
11 team.

12 13. As part of its business, Enterprise develops, advertises, markets, and distributes
13 written materials discussing its management systems and methods as a means for facilitating its
14 business-consulting services.

15 **Dr. Lippitt's Copyrighted Materials**

16 14. Since at least as early as 1986, Dr. Lippitt has been developing and refining a
17 system for managing complex organizational change.

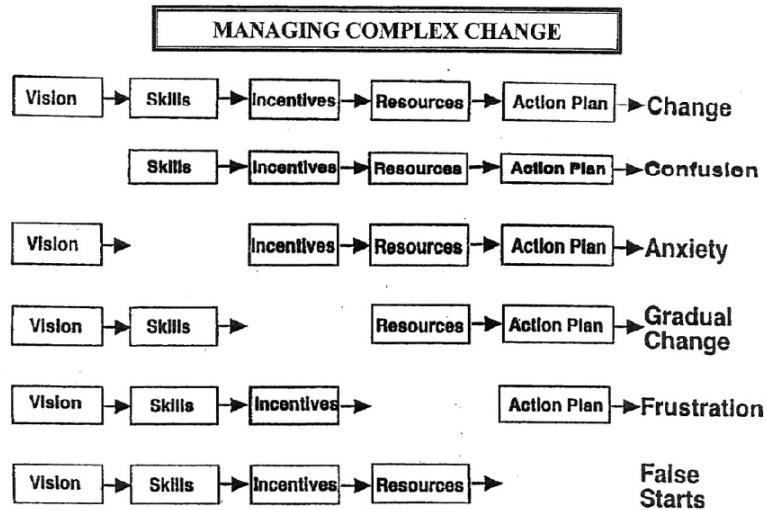
18 15. Between 1987 and 2003, Dr. Lippitt developed a set of creative graphic and
19 literary works ("Dr. Lippitt's Works" or "Works") that present her system for managing complex
20 organizational change.

21 16. The Works are famous in the field.

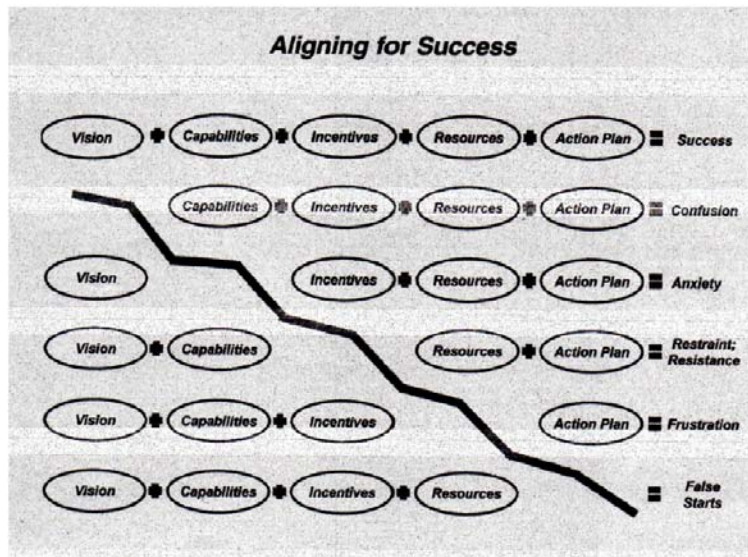
22 17. The Works are currently licensed to Enterprise for use by Enterprise in its various
23 consulting and educational engagements.

24 18. At the heart of each of Dr. Lippitt's Works are single page graphics variously
25 entitled "Managing Complex" and "Aligning for Success."
26

19. A version of a chart from 1987 entitled “Managing Complex Change” is as follows:



20. Another version of the chart, entitled “Aligning for Success” is as follows:



21. Dr. Lippitt registered copyrights on her works.

22. In 1987, Dr. Lippitt registered the Managing Complex Change chart, which is protected under U.S. Copyright Registration Nos. TX 2-124-202.

23. In 1990 and 1993, Dr. Lippitt registered the Aligning for Success chart, which is protected under U.S. Copyright Registration Nos. TXu 956-226 and TX 5-827-350 respectively.

24. U.S. Copyright Registration Nos. TX 2-124-202, TXu 956-226 and TX 5-827-350 are valid copyright registrations, which are duly and properly registered with the United States Copyright Office.

25. A true and correct copy of the U.S. Copyright Registration Certificate for these registrations are attached as Exhibit A and incorporated by reference.

26. The Works are exclusively licensed to Enterprise for use in Enterprise's consulting business.

27. Enterprise and Dr. Lippitt used the Managing Complex Change chart in numerous presentations, training sessions and consulting engagements between 1987 and 1999 to a wide variety of organizations Aligning for Success chart between 1999 and the date of this Complaint to a wide variety of organizations.

28. Enterprise has sold various publications including one or more of the Works, to those who wish to purchase such publications for distribution in training programs.

29. Enterprise licenses the Works to organizations and businesses.

30. The Works have never been published to the general public.

31. Enterprise owns the rights to the Works, including rights to produce derivative works.

32. Despite Enterprise never having sold the works publically, the works have been widely copied and can be found online.

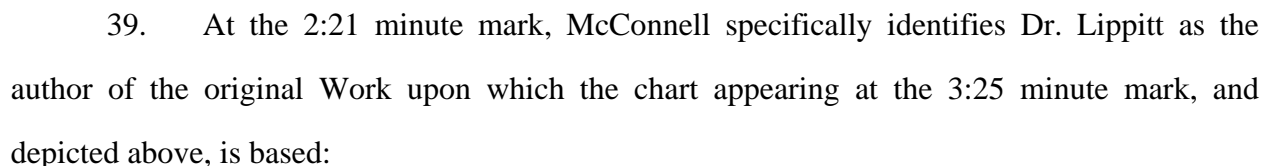
Defendants

33. Construx is a training and consulting firm that works primarily in the software industry.

34. Steve McConnell is the Founder and CEO of Construx. McConnell has authored numerous books, training programs, videos, and presentations on training and consulting topics, including organizational change.

Defendants' Infringing Activities

37. At the 3:25 minute mark in the video entitled “Agile Transformation Tips – Change model Part 1”, the following chart appears:





Agile Transformation Tips - Change Model | Part 1

13,963 views

169 4 SHARE SAVE ...



Construx Software
Published on Mar 3, 2016

SUBSCRIBE 2.1K

40. Around the 2:21 minute mark, McConnell attributes the change model to Dr. Lippitt stating, “the specific change model in this talk is inspired by Mary Lippitt and Tim Knoster . . .”

41. The attribution is evidence of direct infringement.

42. The attribution shows knowledge of Dr. Lippitt’s works.

43. Attribution to Mr. Knoster is incorrect.

44. Mr. Knoster did not author any part of, and has no legal interest in the Works.

45. On information and belief, Mr. Knoster did not give Defendants permission to use his name.

46. Mr. Knoster has attributed the works to Enterprise Management in his published work.

47. The remainder of the YouTube video discusses individual components of Dr. Lippitt's copyrighted work.

48. On information and belief, Defendants knew of Dr. Lippitt when it published the YouTube Video.

49. On information and belief, Defendants have seen Dr. Lippitt's copyrighted Works prior to publishing the YouTube Video.

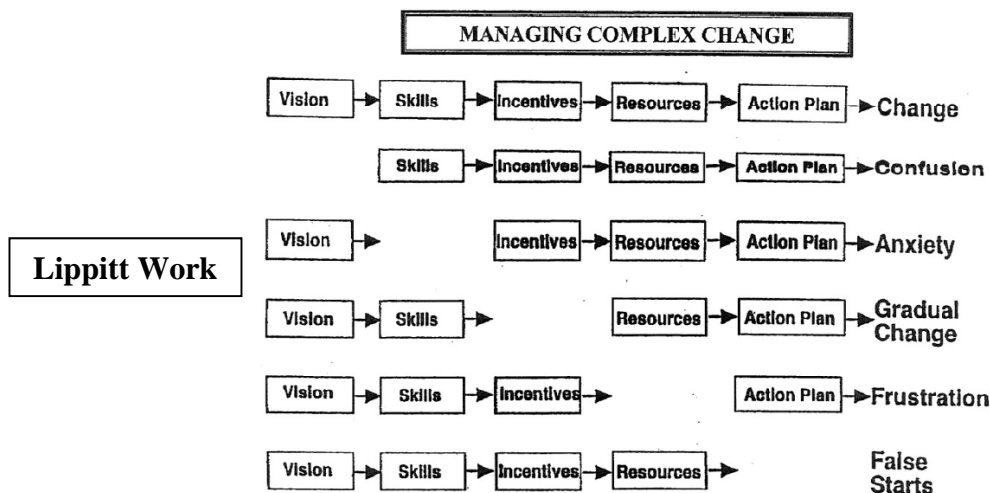
50. On information and belief, Defendants had access to Dr. Lippitt's copyrighted Works prior to publishing the YouTube video.

51. On information and belief, Defendants did not independently create the chart depicted in the YouTube video, which Defendants attributed to Dr. Lippitt.

52. On information and belief, Defendants modified Dr. Lippitt's work to arrive at the version shown in the YouTube Video.

53. The chart published by Defendants infringes Enterprise's rights in Dr. Lippitt's Works.

54. A simple comparison of the infringing chart with Dr. Lippitt's chart illustrates that the two are substantially similar:

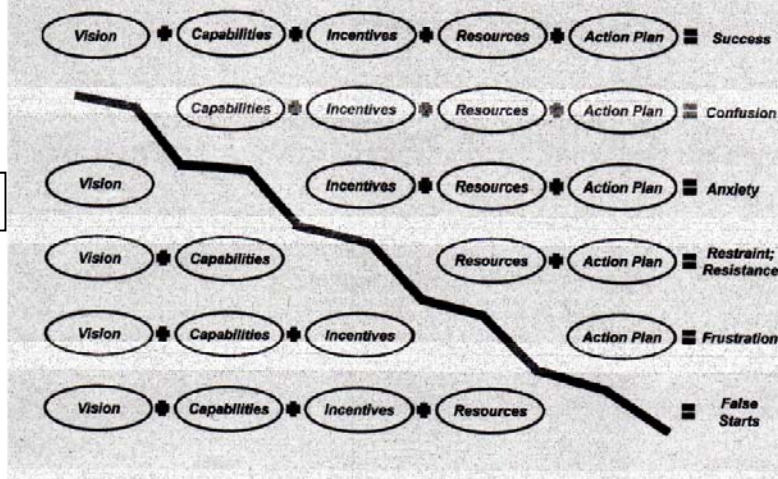


Lippitt/Knoster Change Model

Component	+	Component	+	Component	+	Component	+	Component	+	Component	=	Outcome
Vision	+	Consensus	+	Skills	+	Resources	+	Incentives	+	Action plan	=	Change
Vision	+	Consensus	+	Skills	+	Resources	+	Incentives	+	Action plan	=	Confusion
Vision	+	Consensus	+	Skills	+	Resources	+	Incentives	+	Action plan	=	Sabotage
Vision	+	Consensus	+	Skills	+	Resources	+	Incentives	+	Action plan	=	Anxiety
Vision	+	Consensus	+	Skills	+	Resources	+	Incentives	+	Action plan	=	Frustration
Vision	+	Consensus	+	Skills	+	Resources	+	Incentives	+	Action plan	=	Resistance
Vision	+	Consensus	+	Skills	+	Resources	+	Incentives	+	Action plan	=	Treadmill

Construx
Copy

Aligning for Success



Lippitt Work

55. There are only minor differences when comparing Dr. Lippitt's Works to Defendants' infringing chart.

56. These minor changes include: 1) the addition of a column “Consensus;” 2) flipping the “Resource” and “Inventive” columns; and 3) Defendants utilizes synonyms for the result in the far right column, e.g. “Treadmill” in exchange of “False Starts.”

57. An ordinary observer would at least find Dr. Lippitt's Works, and the Enterprise copy, substantially similar if not directly copied.

58. Defendants' chart is at least a derivation of Dr. Lippitt's work.

59. Defendants did not independently conceptualize every feature of the chart depicted in the YouTube video.

60. Defendants' use of Dr. Lippitt's Work to create a derivative work depicted in the YouTube video infringes on Enterprises' rights in the original works.

61. Defendants do not own the right to the underlying Lippitt Works.

62. Neither Construx nor McConnell ever received permission to use the Work appearing in the YouTube video.

63. Neither Construx nor McConnell ever received permission to use Dr. Lippitt's name in the YouTube video.

64. Defendants' use of Dr. Lippitt's name is in bad faith as Defendants are willfully infringing the Works.

65. Defendants knew they did not have rights to the Works attributed to Dr. Lippitt.

66. Defendants' use of Dr. Lippitt's name inaccurately suggests Dr. Lippitt endorses Construx use of her Works and their underlying ideas.

67. Upon information or belief, Defendants used Dr. Lippitt's name to trade on her reputation to create legitimacy for Defendants' business.

68. Defendants included the following "Copyright Notice" at the end of the YouTube video:



69. Defendants understand and are aware of Copyright law and sought to preserve its rights in the YouTube video.

70. As of the filing of the original complaint, the video had been viewed at least 13,963 times.

71. As of the filing of the original complaint, despite requests from Dr. Lippitt, the video was not taken down.

72. Defendants are aware that on nearly identical facts, the 10th circuit upheld Dr. Lippitt's copyright in the Works and found Defendants' strikingly similar conduct infringing. *See Lippitt v. Warrick*, 717 F3d 1112 (10th Cir. 2013).

73. On information and belief, Defendants use the same copy of Dr. Lippitt's work, as depicted in the YouTube video, in other presentations on the same or similar topics of change.

74. On information and belief, discovery will reveal numerous other acts of infringement and uses of infringing copies, including at seminars and presentations.

Infringing Use in Print – “More Effective Agile”

75. Construx published and is currently printing a book titled “More Effective Agile,” authored by Construx CEO Steven McConnell.

76. In the book, McConnell describes “a change model that is inspired by the work of Tim Knoster, which I will refer to as the ‘Domino Change Model.’”

77. The book goes on to describe that “a successful organization change requires these elements: Vision, Consensus, Skills, Resources, Incentives, Action Plan If all elements are present, a successful change occurs.”

78. The change model described is Dr. Lippitt’s.

79. On information and belief, Defendants derived their change model from Dr. Lippitt’s copyrighted works.

80. Defendants’ attribution of the change model is limited to Knoster.

81. Dr. Lippitt is not mentioned.

82. Defendants were aware, at the time of publishing, that Dr. Lippitt is the source of the change model (*see* YouTube video).

83. On information and belief, Defendants were aware of Dr. Lippitt’s interest in the Works and the described change theory prior to printing “More Effective Agile.”

84. The following figure is included which describes the “Domino Change Model” (“DCM”):

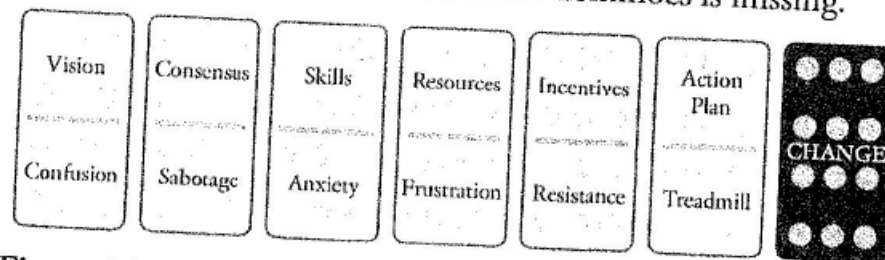
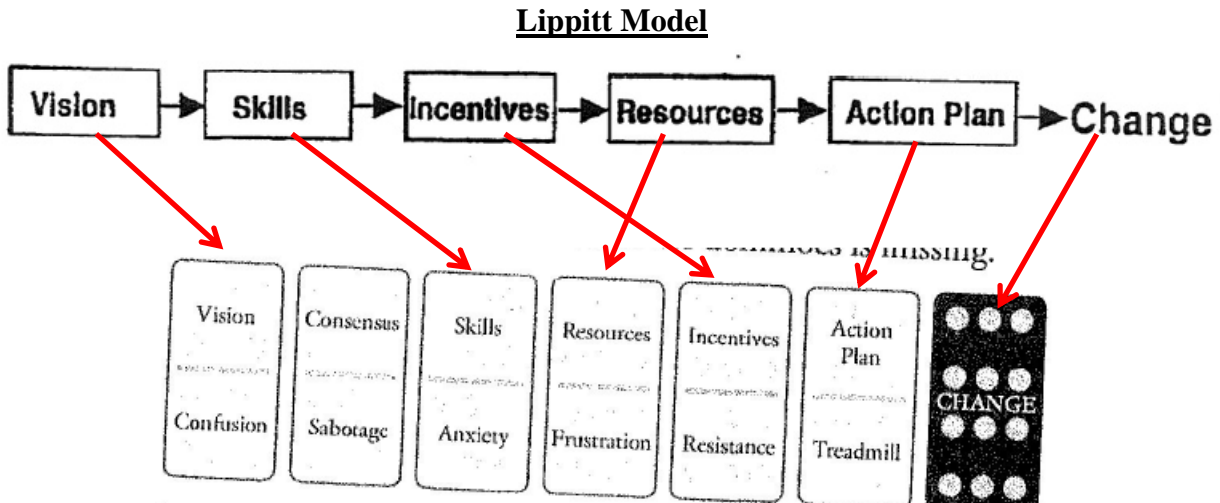


Figure 23-1

The Domino Change Model describes required elements for change and the effects of each missing element.

85. The DCM includes six elements for success in the upper position, and the consequence of a plan lacking the upper element is listed at the lower position. For example, a lack of vision (top left) results in confusion (bottom left).

86. This is nothing more than at best a derivative of Dr. Lippitt's Works.

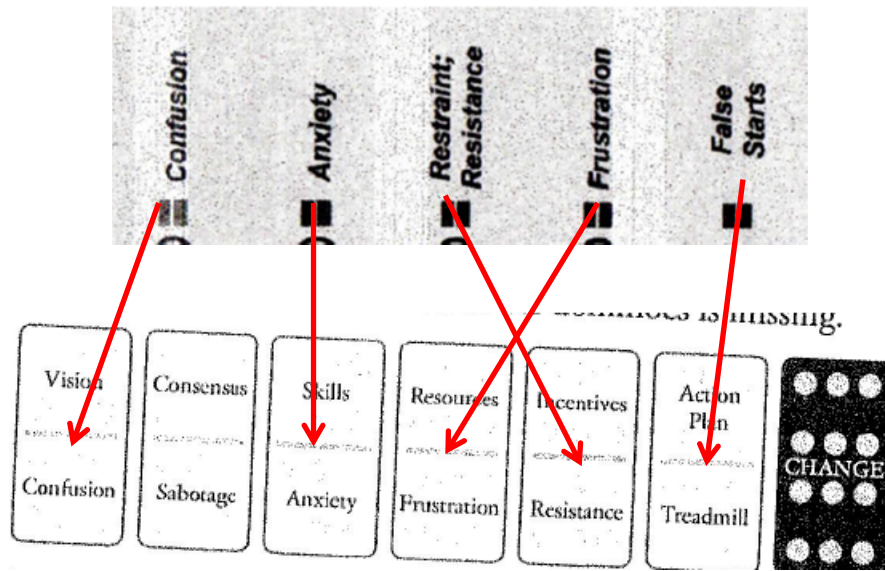


Construx / McConnell

87. There are only two changes from the top line of Dr. Lippitt's Works. First, the addition of Consensus, and second, the rearrangement of incentive and resources.

88. The bottom side of each "domino" also copies Dr. Lippitt's Works.

Lippitt Model



Construx / McConnell

89. There are only three minor changes from Dr. Lippitt's Works. These minor changes are: 1) the addition of Sabotage; 2) rearrangement of Resistance and Frustration; and 3) the use of the synonym "treadmill" for false starts.

90. The DCM found in Defendants' new book copies a substantial portion of Dr. Lippitt's work both in quantity and quality; it goes to the heart of the Works.

91. Defendants did not receive permission from Dr. Lippitt or Enterprise to use the Works in fashioning its DCM diagram.

92. Enterprise has the exclusive right to prepare derivative works.

93. On information and belief, Defendants derived their domino change model from Dr. Lippitt's copyrighted works.

94. As a result of Defendants' uses of the Works, Plaintiffs' intellectual property is being used by a competitor, without a license, to further the competitors business.

95. Defendants are infringing Enterprises' rights to the Works.

Enterprise's Attempts to Resolve this Matter

96. On or about May 17, 2019, Counsel for Enterprise sent a letter to Construx informing Construx and McConnell of their infringement of the Lippitt Works.

1 97. Construx replied with its own letter on or about May 29, 2019.

2 98. Construx's letter relies on assumptions and conclusions previously dismissed by
3 the 10th circuit.

4 99. Construx did not remove any infringing materials prior to this lawsuit.

5 100. Enterprise attempted to meet and confer with Construx for weeks, but Construx
6 did not meet and confer with Enterprise.

7 **Defendants' Infringement is Willful**

8 101. Defendants' violations are willful, deliberate and committed with prior notice and
9 knowledge of Enterprise's copyrights.

10 102. The Parties are in the same industry

11 103. The Parties offer many of the same services.

12 104. Defendants' conduct has caused and continues to cause significant and irreparable
13 harm to Enterprise.

14 105. Enterprise brings this action to recover damages for the harm it has sustained, to
15 impose a constructive trust upon Defendants' illegal profits and assets purchased with those
16 profits, and to obtain injunctive relief prohibiting Defendants from further violations and
17 infringements.

18 **COUNT I – COPYRIGHT INFRINGEMENT**

19 106. Enterprise realleges and reincorporates herein by reference the allegation
20 contained in Paragraphs 1 through 105 of this Complaint as set forth above.

21 107. Enterprise is the owner of the right, title, and interest in various copyrighted
22 Works, registered with the United States Copyright Office. *See* Exhibit A.

23 108. Enterprise is the owner of the right, title, and interest in U.S. Copyright
24 Registration No. TX 2-124-202.

25 109. Enterprise is the owner of the right, title, and interest in U.S. Copyright
26 Registration No. TXu 956-226.

1 110. Enterprise is the owner of the right, title, and interest in U.S. Copyright
2 Registration No. TX 5-827-350.

3 111. Enterprise has exclusive rights in each of those copyrighted Works under 17
4 U.S.C. § 106.

5 112. Defendants have infringed one or more of the Works under 17 U.S.C. § 501, et
6 seq. by copying and distributing, without any authorization or approval from Enterprise or Dr.
7 Lippitt, copies of the Works, or derivations based on the Works, and or making other infringing
8 uses of the Works.

9 113. Defendants are liable to Enterprise under 17 U.S.C. § 504 for either or both the
10 copyright owner's actual damages and any additional profits of the infringer, or statutory
11 damages.

12 114. Furthermore, since Defendants willfully and flagrantly infringed one or more of
13 the Works, on multiple occasions, Defendants are liable to Enterprise for maximum statutory
14 damages, per work, under 17 U.S.C. § 504(C)(2).

15 115. Furthermore, Enterprise is entitled to injunctive relief under 17 U.S.C. § 502 and
16 to an order impounding all infringing materials under 17 U.S.C. § 503.

17 116. Finally, particularly in light of the Defendants' willful and flagrant violations of
18 17 U.S.C. § 505, Enterprise is also entitled to recover its attorney's fees and costs.

19 **COUNT II – CONSUMER PROTECTION ACT.**

20 117. Enterprise realleges and reincorporates herein by reference the allegation
21 contained in Paragraphs 1 through 116 of this Complaint as set forth above.

22 118. Defendants are using Dr. Lippitt's name to benefit their own business.

23 119. Defendants are also using charts that are identical to, confusingly similar to, or
24 derivative from, charts in one or more of Enterprise and Dr. Lippitt's copyrighted Works in
25 connection with goods and services that are the same as Plaintiffs, without consent from
26 Plaintiffs.

1 120. By knowingly profiting from, publishing, providing to the public for free, and
2 using Plaintiffs' copyrighted works and uncopyrighted ideas, in connection with competing
3 goods and services, Defendants' committed unfair methods of competition and unfair or
4 deceptive acts or practices in the conduct of any trade or commerce under RCW 19.86.020.

5 121. By knowingly using Dr. Lippitt's name and ideas to their own profit, Defendants
6 commit unfair competition.

7 122. Defendants have been injured in their business by Defendants unfair trade
8 practices.

9 123. Plaintiffs seek damages, treble damages, and attorney fees pursuant to RCW
10 19.86.090.

11 **COUNT III – PERSONALITY RIGHT UNDER RCW 63.60.010 et seq.**

12 124. Enterprise realleges and reincorporates herein by reference the allegation
13 contained in Paragraphs 1 through 123 of this Complaint as set forth above.

14 125. Plaintiff has a property right in the control and use of her name, including as
15 associated with the Works, and the ideas encompassed by the Works.

16 126. Defendants knowingly used Dr. Lippitt's name in their YouTube video.

17 127. Defendants did not have permission to use Dr. Lippitt's name.

18 128. Defendants used Dr. Lippitt's name in bad faith.

19 129. Defendants knew they did not have Dr. Lippitt's permission to use her name to
20 compete with her and for their own profit.

21 130. Using Dr. Lippitt's name, without permission, to create content to compete with
22 Dr. Lippitt is not a fair or good faith use.

23 131. On information and belief, Defendants use was not in good faith use or fair use in
24 competing with Dr. Lippitt while using her name.

25 132. On information and belief Defendant perceived significant value or received
26 significant actual value by using Dr. Lippitt's name.

133. Dr. Lippitt's reputation was, and remains, more impactful and known in her and Defendants' field of business than Defendants.

134. Defendants' actions constitute a violation of Dr. Lippitt's rights under 63.60.050

135. Plaintiffs seek damages and fees pursuant to RCW 63.60.060.

PRAYER FOR RELIEF

WHEREFORE, Enterprise respectfully requests judgment as follows:

A. A permanent injunction enjoining Defendants, their agents or assigns from reproducing, preparing, distributing, selling, using, or displaying derivative works based on Dr. Lippitt's Works without authorization from Dr. Lippitt or Enterprise;

B. An award of Plaintiffs' special, actual and statutory damages as follows:

- i. Plaintiffs' damages and Defendants' profits pursuant to 17 U.S.C. § 504(b), or, alternatively, enhanced statutory damages, per work, pursuant to 17 U.S.C. § 504(c) and 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of the Copyrighted Works;
- ii. Plaintiffs' damages and Defendants' profits pursuant to 17 U.S.C. § 1203(c)(2), or alternatively, statutory damages pursuant to 17 U.S.C. § 1203(c)(3); and
- iii. Plaintiffs' damages and Defendants' profits as allowed by State law under RCW 19.86.010 et seq. and 63.60.010 et seq.

C. An award of costs and attorneys' fees to Plaintiffs under 17 U.S.C. § 505 and RCW 19.86.090 or any other applicable statutory provision; and

D. Such other and further relief as the Court deems just and proper.

1 DATED the 17th day of December, 2019.

2 *Respectfully submitted,*

3 By: s/ Benjamin J. Hodges

4 Benjamin Hodges, WSBA 49301

5 By: s/ Kevin Ormiston

6 Kevin Ormiston, WSBA 49835

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14 *Attorneys for Enterprise Management*
15 *Limited, Inc. and Dr. Mary Lippitt*

CERTIFICATE OF SERVICE

I certify that on December 17, 2019, I electronically filed the foregoing document with the Clerk of the Court via CM/ECF which will notify all parties in this matter who are registered with the Court's CM/ECF filing system of such filing.

Executed in Seattle, Washington on December 17, 2019.

s/ Ryan Duffey

Ryan Duffey, Paralegal